

EDITORIAL. MISSED CONNECTIONS, BAD WEATHER AND STRIKES. THE PERILS OF MODERN AIR TRAVEL.

David Grant

Recently I was flying to Ljubljana from Heathrow via Frankfurt. Because of a delay at Heathrow the plane departed so late that I missed my connecting flight in Frankfurt. The airline put me up in an airport hotel overnight, which included a dinner and a breakfast, and booked me on a new flight the next morning, meaning I arrived in Ljubljana half a day late. These arrangements worked quite smoothly although it took some time for them to be put into place because there were numerous other people waiting in line at Frankfurt Airport to be sorted out. Additionally, despite being placed into a 5 star hotel, passengers in the same position as me were treated as second class citizens; we were not allowed to eat in the main hotel restaurants but were relegated to a soulless conference room in the depths of the hotel where we were served food that bore more than a passing resemblance to the school dinners I endured many decades ago. But looking on the bright side I did have a bed for the night, I was fed, and I did have a flight booked to my destination the next morning – this was not the end of the world by a long way – and all because of a fine piece of EU consumer protection legislation – Regulation 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

Airlines hate Regulation 261/2004 because they find themselves having to pay out large sums of money in compensation for delays and cancellations and for accommodation and subsistence for stranded passengers. One of the superficially attractive arguments they use against it is why should they pay out €250 in compensation for a flight that only cost £32.99. The answer to this is that the amount you pay for a service is not necessarily related to the losses incurred if the contract is broken. Take the case of *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd* which was decided by the House of Lords in 1983. In that case a farmer paid £201 for a consignment of seeds which turned out to be defective. The seeds cost relatively little but the losses he suffered for loss of production amounted to £61,513 and the House of Lords unanimously held he was entitled to that.

I don't know how much my fare cost because it was part of a package but I suspect it was relatively modest but in terms of my losses I missed half a day of my holiday. Add to that

the anxiety caused by the delay and I think that €250 is letting the airline off cheaply. And mine was not an extreme case by any stretch of the imagination; while I was away a friend contacted me about a flight to Italy which was cancelled and the alternative arrangements she was offered involved a flight the next day from a different airport in the UK to a different airport in Italy and a four hour car journey at night to her destination - all of which had to be undertaken with her 85 year old mother. Again, €250 seems to be cheap at the price.

However in both these cases the airlines concerned have a potential defence – of ‘exceptional circumstances’ so the legislation is not entirely biased against them. In my case, although it is not entirely clear, they may plead ‘the impact of an air traffic management decision’ and in the case of my friend they may plead ‘meteorological conditions incompatible with the operation of the flight concerned’ so although the airlines have incurred expenses in overnight accommodation and re-routing they may not have to pay the €250 compensation. But the burden of proof is on the airline to prove exceptional circumstances and now that the CAA has established comprehensive access to ADR schemes it has become much easier to bring the airlines to book. The schemes are simple to use and have the added advantage of being cheap or without cost to the passenger and even airlines such as Ryanair and easyJet have joined them. The schemes are independent of the airlines and the CAA. As an alternative to bringing a small claim in the County Court they have much to commend them.

Just as I was putting the finishing touches to this editorial my friend who had the unfortunate outbound journey to Italy contacted me again to say that her inbound flight had also been cancelled! Some people are just so unlucky. However her legal position may be better because it seems the cancellation was caused by a strike of airline personnel, in which case a recent decision of the ECJ may be of assistance. In the case of *Helga Krüsemann and Others v TUIfly GmbH* (C-195/17) the court held that a wildcat strike by cabin staff did not amount to extraordinary circumstances. It remains to be seen as to whether the airline offers compensation automatically or whether she will have to submit an ADR claim.

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